LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U. S.
FILED
MAR 30 1950
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 445

BROWN SHOE COMPANY, INC.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE PETITIONER IN OPPOSITION TO MOTION TO POSTPONE ARGUMENT, FILED IN DOCKET No. 682

CHARLES B. McINNIS,
ERNEST M. CALLOMON,
Mayflower Office Building,
Washington 6, D. C.,
Attorneys for Petitioner.

Of Counsel:
ROBERTS & McINNIS,
Mayflower Office Building,
Washington 6, D. C.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 445

BROWN SHOE COMPANY, INC.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE PETITIONER IN OPPOSITION TO MOTION TO POSTPONE ARGUMENT FILED IN DOCKET No. 682

In No. 682 in this Court, in which the Commissioner of Internal Revenue has petitioned for a writ of certiorari to the United States Court of Appeals for the Third Circuit, the respondent, The McKay Products Corporation, anticipating the grant of certiorari, has filed a motion to postpone the argument in the case of *Brown Shoe Company, Inc.* v. *Commissioner of Internal Revenue*, which is set for

argument during the week of April 3, 1950, so that the two cases may be argued and considered together. The Brown Shoe Company, Inc., by Charles B. McInnis and Ernest M. Callomon, its attorneys, respectfully moves that the motion of the McKay Products Corporation be denied.

Reason for Opposing the Motion

1. The petition of the Brown Shoe Company, Inc., for a writ of certiorari was granted on January 9, 1950. The petitioner, Brown Shoe Company, Inc., has filed its brief in that case, has received a typewritten copy of the respondent's brief, and its counsel are presently considering filing a reply brief before the time the case is set for argument. Petitioner is ready to argue the case on the date now set by this Court. A postponement of the case would be very inconvenient.

2. Two of the issues involved in No. 445 (*Brown Shoe Company, Inc.* v. *Commissioner of Internal Revenue*) are substantially identical with the issues involved in No. 682 (*Commissioner of Internal Revenue* v. *McKay Products Corporation*). There are additional issues in No. 445, which are not involved in No. 682.

3. The moving party, The McKay Products Corporation, states (No. 2 of its reasons supporting its motion) that the reason for granting the writ of certiorari in No. 682 (*Commissioner of Internal Revenue* v. *McKay Products Corporation*) is to permit a consideration of both cases together. This is incorrect, because the reason for petitioning for, and probably also for granting, the writ in that case is that the conflict existing between the Third and Eighth Circuits be resolved.

4. The moving party, The McKay Products Corporation, has not indicated that the issues involved would not be fairly presented to this Court in No. 445 (*Brown Shoe Com-*

pany, Inc., v. *Commissioner of Internal Revenue*), or that the Brown Shoe Company, Inc., the petitioner in No. 445, has failed to argue the issues fully in its brief which it has filed and with which counsel for the moving party are familiar. The Commissioner of Internal Revenue, who is a party to both proceedings, can be expected to make a complete presentation of the issues.

5. There is no reason why the argument in the pending case should be postponed. Since in No. 682 the writ has not yet been granted and, if granted, briefs will be filed, such postponement would mean that the case of *Brown Shoe Company, Inc.* v. *Commissioner of Internal Revenue*, No. 445 in this Court, would have to be carried over into the next term. Such a delay would be most inconvenient to the petitioner, the Brown Shoe Company, Inc., and to petitioner's counsel who have made all of their plans in anticipation that the case will be argued during the week of April 3, 1950.

Conclusion

It is respectfully requested that the motion of The McKay Products Corporation, in No. 682 in this Court, to postpone argument in No. 445 (*Brown Shoe Company, Inc.*, v. *Commissioner of Internal Revenue*) be denied.

Respectfully submitted,

CHARLES B. McINNIS,
ERNEST M. CALLOMON,
Mayflower Office Building,
Washington 6, D. C.,
Attorneys for Brown Shoe Company, Inc.

Of Counsel:
ROBERTS & McINNIS,
Mayflower Office Building,
Washington 6, D. C.